IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. , Original

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,

v.

STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS; STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

ANSWER OF THE STATE OF LOUISIANA TO COMPLAINANT'S PETITION FOR REHEARING

FRED S. LEBLANC,
Attorney General,
State of Louisiana

JOHN L. MADDEN,
Assistant Attorney General,
State of Louisiana

BAILEY WALSH,
Special Assistant Attorney General,
State of Louisiana

[illegible] & Argus, Washington, D. C.

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Now comes the State of Louisiana, through its Attorney General, appearing herein for the sole and only purpose of answering complainant's petition for rehearing and, so responding, respectfully states:

Preliminary Statement

The argument set forth in Rhode Island's petition for rehearing has been adopted by and made the argument of Alabama in the latter's petition for rehearing. To obviate

repetition, the statement and argument herein contained shall also apply to Alabama's petition as if written in Louisiana's answer thereto in extenso.

I.

In answer to part or section I of Rhode Island's petition for rehearing, Louisiana makes the ensuing statement:

The per curiam opinion of this Court was not predicated on assumption, nor did it constitute an advisory opinion on hypothetical questions of law and fact involving state and federal relations.

Complainant's contentions in the aforementioned respect are primarily refuted by the fact that this Court had no reason to indulge in assumption. Another statement and application were only made of the long-enduring pronouncements made by this Court in cases where complaints or suits involved attacks on Acts of Congress by which government property or territory was granted. (*Van Brocklin* v. *Tennessee*, 117 U. S. 151; *United States* v. *San Francisco*, 310 U. S. 16; *United States* v. *Wyoming*, 331 U. S. 440; *Federal Power Commission* v. *Idaho Power Company*, 344 U. S. 17).

Complainant levelled an attack on Public Law 31, 83rd Congress, 1st Session, in which Congress granted certain property to the several states, pursuing its exclusive prerogative under Article IV, Sec. 3, cl. 2 of the Constitution. The attack was made an obvious fact, and this Court, far from assuming anything whatever and of passing upon hypothetical questions of fact and law, simply pointed out the clear and unequivocal language of the constitutional provisions aforesaid, supported by judicial decisions of equal clarity and certainty; therefore, this Court had no occasion to resort to assumption.

Louisiana fails to understand the purpose of the point brought out on page 2 of complainant's petition. Surely the fact that the defendant states abstained from going

into the merits in opposing the motion made for leave to file complaint is no reason why this Court should reverse its per curiam opinion and permit the case to be heard on the merits. Nor does Louisiana comprehend why the "grave and far-reaching issues", so called and sought to be raised by complainant, should perforce of their importance cause this Court to ignore Article IV, Sec. 3, cl. 2 of the Constitution and its jurisdictional pronouncements in that regard. Jurisdiction is not conferred on the mere basis of the gravity vel non of the issues sought to be raised in a complaint.

Louisiana is also at a loss to appreciate the relevancy of the following statement appearing on page 3 of complainant's petition: "The suits brought by the complainant states raise issues not only of constitutional power but of the statutory exercise of constitutional power." That statement can only be interpreted within reason to mean that, if and only if the Court should take jurisdiction, it is complainant's surmise that judicial inquiry would be made of constitutional power and the statutory exercise thereof under Public Law 31. Complainant cannot overcome the jurisdictional bar to its wishful action by suggesting to the Court the course of its inquiry should the merits of the cast be reached.

Complainant does not strengthen but weakens its position in citing and quoting from the case of *International Longshoremen's Union* v. *Boyd*, decided by this Court on March 8, 1954. From the standpoint of presenting a justiciable case or controversy and of invoking the equitable jurisdiction of this Court, one of the most flagrant shortcomings in Rhode Island's complaint was the stress placed upon certain contemplated but unforeseeable actions that defendant states might take to the prejudice of complainant in the indeterminate future. Had this Court passed upon nebulous predictions, indeed, such decision *would* have involved "too remote and abstract an inquiry for the proper exercise of the judicial function", as this Court

said in the case last mentioned; moreover, it is submitted that if this Court had adjudicated upon all of the foreboding contained in Rhode Island's complaint, it *would* have resulted in an advisory opinion on hypothetical questions of law and fact, the very thing that Rhode Island complains of in its petition.

Complainant makes the following statement on page 5 of its petition:

> If the complainant states have standing and right to sue, which this Court does not deny, it is respectfully submitted that the Court should either exercise its jurisdiction and adjudicate the rights of the parties on a full consideration of the applicable facts and law, or it should in its discretion refuse to take jurisdiction."

That statement is one which either complainant or defendants could have made with equal sincerity and consistency in arguing the motion for leave to file complaint, and the Court in its judgment actually followed one of the two alternative courses mentioned. But a declaration of that kind has no more bearing on complainant's petition for rehearing than if it had been said that this Court should or should not permit the complaint to be filed and the case heard on its merits. This Court need not be reminded of the choice it must make in taking one of two courses of judicial action.

II.

In answer to part or section II of Rhode Island's petition for rehearing, Louisiana makes the following statement:

The acts of the defendant states under Public Law 31 have been validated and made lawful, even assuming for purpose of argument that one or more of such states have taken any action at all since the adoption of such statute. Dealing with the property of the United States by grant, such acts of the defendant states, consistent with the terms of the statute, were validated and made lawful by the enact-

ment itself, all in view of the power exclusively vested in Congress pursuant to Article IV, Sec. 3, cl. 2 of the Constitution. To pass upon the acts of defendant states, performed or to be consummated in full conformity with the statute, would be tantamount to judicial interference in a field of national power which Congress alone may exercise.

Louisiana hesitates to respond to Rhode Island's argument to the effect that defendant states acquired no offshore oil resources, beyond the tidelands proper, under Public Law 31, or that what they received thereunder was restricted to the mere right of administering and developing the natural resources of the submerged lands within their seaward boundaries. This particular phase of complainant's argument clearly pertains to the merits of the case and would only be timely in the event this Court takes jurisdiction. Louisiana cannot ignore such argument, however, and let it go entirely unchallenged, so a few observations shall be made to show the fallacy of the position which complainant takes on the point above mentioned.

In the first place, Public Law 31 makes an express grant of the lands involved, together with the natural resources thereof. Surely Congress would not have done such a vain thing as to grant certain lands to the states in one section of an Act and then except the same lands from the grant in another section of the statute.

In the second place, Congress made it entirely clear in in the Act that the grant included both the *ownership* of the lands with which we are concerned and the *right and power* to manage, administer, lease, develop, and use said lands and the natural resources thereof. This intention was made increasingly positive by dealing with the ownership in Section 3(a) (1) and with management, administration, development, leasing and use in Section 3 (a) (2).

In the third place, such lands do not fall into any one of the categories of land-acquisitive means as mentioned in Section 5 of the Act. If all of the lands which complainant refers to as being excepted from the grant had been ac-

quired by the United States as a result of "eminent domain proceedings, purchase, cession, gift or otherwise in a proprietary capacity", it stands to reason and is conclusive that this Court would have so held in *United States* v. *California*, 332 U. S. 19.

Again, if the United States had acquired all of such lands by one or more of the means enumerated in Section 5 of the Act, then complainant must concede that the Presidential Proclamation of September 28, 1945, 59 Stat. 884, declaring the natural resources of the subsoil and sea-bed of the continental shelf to appertain to the United States, served a superfluous and needless purpose.

No matter what was said at the hearings on S. J. Res. 13, Congress dealt with the lands and natural resources conveyed as property of the United States, and this Court identified it as "government property" in *United States* v. *California, supra.*

In search of legislative intention, (all of which is unnecessary in view of the clarity of the letter of the Act), complainant places great stress on the testimony of the Attorney General of the United States before the Senate Committee on Interior and Insular Affairs, at the hearings on S. J. Res. 13, 83rd Congress, 1st Session, in which that official suggested that the grant contemplated by S. J. Res. 13 be restricted to the power of administering and developing the lands, leaving title to and ownership of same in the Federal Government.

With full respect accorded the Attorney General's views, there is nothing contained in the Committee Report on S. J. Res. 13 or in Public Law 31 itself to show that the Attorney General's suggestion was written into the Act which was adopted. True, Senator Cordon, acting as Chairman of the Senate Committee aforesaid, stated on the Senate floor, in effect, that the exceptions set forth in Section 5 of the Act were urged and recommended by the Department of Justice, but those recommendations cannot be assumed to have included the suggestion made by the

Attorney General to the Senate Committee that title to the lands remain in the Federal Government and that the states be only empowered to manage and develop such property.

Expressing once again this defendant's high regard of the Attorney General's views, it must be said that it is most unusual and extraordinary that a litigant seek to establish legislative intent by the testimony of a witness before a committee of the Senate.

Conclusion

For the reasons set forth in the foregoing answer, Louisiana respectfully urges that Rhode Island's petition for rehearing be denied.

Respectfully submitted,

FRED S. LEBLANC,
Attorney General,
State of Louisiana

JOHN L. MADDEN,
Assistant Attorney General,
State of Louisiana

BAILEY WALSH,
Special Assistant Attorney General,
State of Louisiana

April 5, 1954.

Certificate of Service

I, John L. Madden, Assistant Attorney General of the State of Louisiana and of counsel for said State in the above and foregoing answer, being first duly sworn, certify that I have served a copy of said answer upon each of the following named persons by mailing a copy of the answer to them, postage prepaid, prior to the filing of said answer, and at the following addresses:

Hon. William E. Powers
Attorney General of Rhode Island
State Capitol
Providence Rhode Island

Hon. Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D. C.

Hon. John Ben Shepperd
Attorney General of Texas
State Capitol
Austin, Texas

Hon. Robert B. Anderson
Secretary of the Navy
Department of the Navy
Washington, D. C.

Hon. Edmund G. Brown
Attorney General of California
State Building
San Francisco, California

Hon. Ivy Baker Priest
Treasurer of the United States
Department of the Treasury
Washington, D. C.

Hon. Richard W. Ervin
Attorney General of Florida
State Capitol
Tallahassee, Florida

Hon. Herbert Brownell, Jr.
Attorney General of the United States
Department of Justice
Washington, D. C.

Hon. George M. Humphrey
Secretary of the Treasury
Department of the Treasury
Washington, D. C.

Corcoran, Youngman and Rowe,
Eugene Gressman,
Attorneys at Law
1511 K Street, N. W.
Washington, D. C.

JOHN L. MADDEN
Assistant Attorney General, State of Louisiana

City of Washington, District of Columbia—ss.

Subscribed and sworn to before me this 5th day of April, 1954.

BYRD C. REID
Notary Public in and for Said City and District

[SEAL]